Supreme Court, U.S.
FILED

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In the

# Supreme Court of the United States

LILLIAN HERNANDEZ,

*Petitioner,*

*v.*

BOROUGH OF PALISADES PARK
POLICE DEPARTMENT
AND BOROUGH OF PALISADES PARK

*Respondents.*

Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

## SUPPLEMENTAL APPENDIX

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(Any footnotes trail the end of each document)

Civ. No. 99-3956 (WGB) ORDER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LILLIAN HERNANDEZ,
Plaintiff,

v.

BOROUGH OF PALISADES PARK POLICE DEPARTMENT and BOROUGH OF PALISADES PARK,
Defendants.

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BASSLER, DISTRICT JUDGE:

Plaintiff Lillian Hernandez has brought this action pursuant to 42 U.S.C. § 1983, alleging that Defendants Borough of Palisades Park Police Department and the Borough of Palisades Park ("Defendants") are responsible for violations of her civil rights. Defendants move for Summary Judgment pursuant to Fed. R. Civ. P. 56. The Court has jurisdiction pursuant to 28 U.S.C.

§§1331, 1332 and 1367. For the following reasons, Defendants' motion is granted.

## I BACKGROUND

It is undisputed that in February 1993, while Plaintiff Lillian Hernandez was away on vacation, her home in the Borough of Palisades Park was burglarized. Following the burglary:

Plaintiff reported to the police that eight fur coats valued at approximately $50,000 had been stolen. Approximately one week later Plaintiff reported another attempted burglary of her home, but reported that nothing had been taken.

The burglary of Plaintiff's home was one of a number that occurred in Palisades Park between 1991 and 1993.[1] Ultimately an investigation by the Bergen County Prosecutor's Office and the FBI determined that a group of rogue police officers (approximately 5 of Palisades Park's 17 officers) had been burglarizing homes in the Borough and covering them up by falsifying their investigation records. Plaintiff argues that the vast majority of the officers' targets were female and minority residents of the Borough.[2]

Plaintiff has submitted the Deposition transcript of current Palisades Park Police Chief John Genovese, who recounted at length that the investigation into the burglaries began as early as 1994, when a Ms. Shu3 reported that she believed police were responsible for the burglary of her home. (Genovese Dep. II, 53:1-62:23.) According to Chief Genovese, the former Chief of Police performed a preliminary investigation, and "immediately" turned the allegation of criminal conduct by officers over to the Bergen County Prosecutor's

Office. (Genovese Dep. II, 78:7-9.) Plaintiff has not provided any other evidence regarding victim complaints to the Department; there are no details in the record of other reports that were made accusing officers of other burglaries, or evidence that any earlier reports might have been made and ignored. The only evidence in the record on the subject of complaints to the department is the testimony of chief Genovese. (Genovese Dep. I, 60:25-61:9, 65:12-24; See also Trial Testimony of Officer Anderson, fn. 4, infra.)

According to Hernandez, the police burglarized her home because they knew she would be away on vacation. The police knew she would be away on vacation because she had told Officer Michael Anderson of her planned trip, and asked him to look after the residence. Plaintiff claims that he told her not to worry, and indicated he would "keep an eye on the house." Instead, it is undisputed that Officer Anderson and others burglarized the residence while Plaintiff was away.

At the time Plaintiff told Officer Anderson of her pending vacation, the Police Department had a policy of seeking information from residents about any vacations they might take, so that the Department could keep watch on their residences. Any information submitted by residents was kept by the Desk Officer, who would make it available to other members of the Department. (Genovese Dep. I, 93:13-94:23.)

Officer Anderson ultimately pled guilty to the burglary of Plaintiff's home. At the trial of Lieutenant Anthony Giannantonio, Anderson testified that he and two other officers burglarized the residence. He indicated that Lieutenant Giannantonio, Anderson's commanding officer in the Detective Division, assisted in covering up

the Hernandez burglary by falsifying reports of the incident after the fact.[4] Giannantonio was ultimately convicted of conspiracy to commit burglary and other charges, partly as a result of the Hernandez burglary.

Plaintiff is adamant that she was not aware officers were responsible for the burglary of her home until August, 1997, despite the fact that her estranged ex-husband had allegedly reported his suspicions to the police some time earlier. Hernandez contends that it was not until August, 1997, when she was informed that Officer Anderson pled guilty to the burglary of her home, that she knew the police were involved.[5]

On July 12, 1999, Hernandez filed a complaint in the Southern District of New York, alleging that her Constitutional rights were violated.6 Specifically, she claims that when the officers broke into her home, her First Amendment (violation of privacy), Fourth Amendment (illegal search and seizure), Fifth Amendment (taking) and Fourteenth Amendment (due process and equal protection) rights were violated. Hernandez's complaint alleges that Defendants should be held liable pursuant to 42 U.S.C. §1983 because they negligently hired, trained, and supervised the rogue officers. Hernandez seeks a declaratory judgment against Defendants for their § 1983 violations, injunctive relief, compensatory damages for the loss of the coats ($50,000), damages for emotional distress ($500,000), punitive damages, and attorneys' fees.

## II DISCUSSION

### A. Summary Judgment Standard

The standard for granting summary judgment pursuant to Federal Rule of Civil Procedure 56 is a stringent one.

Summary judgment is appropriate only if all the probative materials in the record "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. p. 56(c); Hersh v. Allen Prods. Co., 789 F.2d 230, 232 (3d Cir. 1986); Lana v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983). An issue involving a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Healy v. New York Life Ins. Co., 860 F.2d 1209, 1219 n.3 (3d Cir. 1988)

The court must resolve all reasonable doubts in favor of the nonmoving party when determining whether any genuine issues of material fact exist. Never v. Riegel Prods. Corp., 720 F.2d 303, 307 n.2 (3d Cir. 1983); Smith v. Pittsburgh Gage & Supply Co., 464 F.2d 870, 874 (3d Cir. 1972). Even though a court must resolve reasonable doubts in favor of the nonmoving party, because a motion for summary judgment is designed to go beyond the pleadings, factual specificity is required of a party who opposes such a motion. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Accordingly, in order to defeat a properly supported motion for summary judgment, a party may not merely restate the allegations of its pleadings, or rely upon self-serving conclusions, unsupported by specific facts in the record. Celotex, 477 U.S. at 322-23; Farmer v. Carlson, 685 F. Supp. 1335, 1339 (M.D. Pa. 1988). A non-moving party must point to concrete evidence in the record which supports each essential element of its case. Id. If the party fails to provide such evidence, then it is not entitled to a trial and the moving party is entitled to summary judgment as a matter of law. Fed. R. Civ. P. 56(e).

B. Liability of the Police Department vs. Liability of the Borough

As an initial matter, the Court notes that Plaintiff has sued both the Borough of Palisades Park and the Borough of Palisades Park Police Department, but not any of the individual officers who actually burglarized her home.[7] Plaintiff's first cause of action is styled "Violation of 42 U.S.C. section 1983 against Borough of Palisades Park Police Department." (Complaint p. 6.) Plaintiff's second cause of action is styled "Violation of 42 U.S.C. Section 1983 against Borough of Palisades Park." (Complaint p. 8.) Plaintiff's complaint contains no other causes of action.

In her complaint, Plaintiff stated that the Police Department "is a law enforcement agency of Defendant Borough of Palisades Park duly authorized to act on its behalf, under color of law." (Complaint, ¶ 7.) Mindful of this statement, Defendants argue that because liability can not attach to both a Police Department and to a municipality at the same time in a § 1983 action, summary judgment should be awarded to Defendants on Plaintiff's claim against the Borough of Palisades Park Police Department.

Numerous courts have held that "in Section 1983 actions, police departments cannot be sued in conjunction with municipalities, because the police department is merely an administrative arm of the local municipality, and is not a separate judicial entity." See DeBellis v . Kulp, 166 F.Supp.2d 255, 264 (E.D. Pa. 2001) (collecting cases). Accordingly, Defendants' motion for summary judgment as to the Borough of Palisades Park Police Department is granted. The Court's inquiry will instead focus on whether the Borough of Palisades Park itself can be held liable for the conduct of its Police

Department and police officers.

C. Plaintiff's § 1983 Claims

1. Agency Liability

Plaintiff's Complaint primarily contends that "this action arises under 42 U.S.C. § 1983, in that Defendants Borough of Palisades Park Police Department, and Borough of Palisades Park, through the conduct of their agents, violated Plaintiff's right[s]." (Complaint, ¶ 1) (emphasis added.) 42 U.S.C. § 1983 provides for a cause of action against:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory subjects, or causes to be subjected, any citizen of the United States. . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.

42 U.S.C. § 1983. Section 1983 "'is not itself a source of substantive rights,' but merely provides 'a method for vindicating Federal rights already conferred.'" Graham v. Connor, 490 U.S. 386, 393-94 (1989).

Although § 1983 may be used to obtain recovery from a municipality for constitutional injuries, "Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort." Monell v. New York City Dept. Of Social Services, 436 U.S. 658, 691 (1978). In keeping with Congressional intent, in Monell the Supreme Court absolutely foreclosed municipal § 1983 liability on the basis of respondeat superior. Id. Instead, Monell and its progeny direct that a municipality may be held liable only for acts or failures of the municipality

itself, and not for the acts or failures of its employees; this ensures that municipal liability is "limited to action for which the municipality is actually responsible." Pembaur v. City of Cincinnati, 475 U.S. 469, 479 (1986) .

To the extent that Plaintiff seeks to recover pursuant to §1983 because Defendants violated her rights "through the conduct of their agents," her claims can not succeed as a matter of law, and must be dismissed.

2. Direct Municipal Liability

Even though respondeat superior liability in § 1983 actions has been foreclosed by the Supreme Court, a plaintiff may still recover against a municipality for constitutional violations that occur at the hands of municipal employees, provided that some link exists between the conduct and the municipality. Plaintiff contends that such a link exists for a variety of reasons. Hernandez alleges that the municipality should be held liable because it breached its duty to her when it failed to employ honest and trustworthy officers, and then failed to adequately train and supervise then. Plaintiff further contends that the municipality should be held liable because it failed to prevent and/or adequately investigate the crimes committed by its officers, which were overwhelmingly committed against females and minority residents (Hispanics and Koreans). Plaintiff theorizes that although Defendants knew or should have known of this pattern of discriminatory conduct on the part of its officers, they failed to take appropriate action to prevent the harm, and as a result evidenced deliberate indifference to the violations of Plaintiff's rights.

In order to recover from a municipality via § 1983, a plaintiff may demonstrate a direct causal link between

their injury and the municipality by demonstrating that the violation of their constitutional rights was caused by either a policy or custom of the municipality. Berg v. County of Allegheny, 219 F.3d 261, 275 (3d Cir. 2000), citing Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir, 1996). Policy is made when a decisionmaker possessing final authority to establish municipal policy with respect to the action issues an official proclamation, policy or edict. Customs are practices of state officials so permanent and well settled as to virtually constitute law." Berg, 219 F.3d at 275 (internal quotations and citations omitted).

A. Giannantonio's Conduct as Municipal Policy

In her brief in opposition to summary judgment, Plaintiff argues that because Lieutenant Giannantonio served in a command position and directed junior officers to commit crimes, he established a municipal policy of violating the rights of minority residents by burglarizing them. Although it is undisputed that Lieutenant Giannantonio was a high-ranking member of the Police Department and a part of the burglary conspiracy, and although it is undisputed that a number of his subordinates were complicit in the burglary plot, there mere fact that he had command authority is not sufficient to transform his con4uct and directions to subordinates into municipal policy.

To determine whether an act is properly attributable to the municipality, instead of attributable to one of its employees, the Supreme Court has guided that "municipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered." Pembaur, 475 U.S. at 481. More specifically, "municipal liability under § 1983 attaches where and only where a

deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." Id. at 483.

At his deposition, current Palisades Park Police Chief John Genovese testified that at "some point in his career" Giannantonio "must have" served as a commanding/senior-ranking officer. (Deposition of Chief John Genovese, 26:22-27:3.) Plaintiff relies on this statement heavily in attempting to make her case that the burglary of her home, allegedly at Giannantonio's direction, amounted to municipal policy.

Plaintiff's theory is unavailing, however, because Plaintiff has produced no evidence that Giannantonio was the senior-ranking officer at the time of the burglaries. Even if he had been! Plaintiff's argument would still fail because Plaintiff has provided no evidence that in those instances where he served as the senior-ranking officer, Giannantonio had "final" authority to set municipal policy.

Plaintiff's unsupported claims are further weakened by the Police Policy Manual Plaintiff herself submitted as evidence. Section 5:1.1 of the Manual demonstrates that as a Lieutenant, Giannantonio would typically have reported to a Captain. The Captain, in turn, would have reported to the Chief of Police. Although the Chief of Police arguably had the authority to set municipal policy at least as far as the Police Department was concerned, Plaintiff has produced no evidence that the Chief of Police was ever aware of the burglary ring, or that he somehow authorized the burglaries.

While Giannantonio could theoretically have found himself serving in the role of the Chief of Police in the

event that all of his superiors were absent, by rule even in that position he would have been bound to follow existing protocols and policies. Section 5:1.4 of the Manual states:

Members of the department who may be placed temporarily in the position of a member of higher rank by proper authority, shall exercise the authority and perform the duties of such higher position, and shall be held responsible in like manner as if regularly appointed to higher office. They shall not alter or countermand any order issued by the member whose place they temporarily occupy, except when expediency demands."

(Emphasis in original.) Even when not occupying a higher position, but serving directly in a commanding position, "a commanding officer has direct control over all members and employees within his command" expressly "subject to direction from higher authority." (Manual Section 5:1.5 (emphasis added.))

At his deposition, Chief Genovese stated that Departmental policy was for officers to uphold the rules and regulations of the department on a twenty-four-hour basis. He further stated that as a matter of policy, criminal conduct by officers of the department would not be tolerated, whether the officers were on or off duty. (Genovese Dep. 82:6-24.) Clearly, the conduct of the rogue officers in this case, including Giannantonio, would have run against that policy. For that reason, absent any evidence that Lieutenant Giannantonio was directed by "a decisionmaker possessing final authority to establish municipal policy with respect to" having those beneath him commit crimes, he himself would have been acting in violation of municipal policy as set by the Chief of Police.

Absent evidence that 1) Giannantonio was directed from above, 2) evidence that Giannantonio's superiors were aware of his misconduct and approved of it, or 3) evidence that Giannantonio himself was acting with final decisionmaking authority, it is not appropriate to impute his gross misconduct to the municipality. Accordingly, Defendants are entitled to summary judgment to the extent that Plaintiff seeks to recover for Giannantonio's supervisory role in the burglary conspiracy.

B. The Borough's Failure to Screen, Train, & Supervise

Distinct from Plaintiff's claim that the burglaries themselves amounted to an unconstitutional policy for which the Borough should be held liable, Plaintiff claims that the Borough had a policy and/or custom of not adequately screening,[8] supervising and/or training its employees, that resulted in her constitutional injuries. Part of this claim includes her contention that the Department did not adequately train its officers that it was inappropriate to take information gathered from residents who intended to go on vacation and use it to burglarize female minority residents.

Having identified a municipal policy or custom (namely failing to adequately screen, train, and supervise), Plaintiff must "demonstrate that, through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged." Berg, 219 F.3d at 276, quoting Board of County Comm'rs of Bryan County v. Brown, 520 U.S. 397, 404 (1997). Because municipal customs of failing to screen, train, or supervise employees do not violate federal law in and of themselves, Plaintiff can only succeed "by 'demonstrating that the municipal action was taken with 'deliberate indifference' as to its known

or obvious consequences. A showing of simple or even heightened negligence will not suffice." Id.

The 'deliberate indifference' standard was articulated by the Supreme Court in City of Canton v. Harris, where the Court was confronted with the question of whether a municipality could be held liable for a "concededly valid policy" that was "unconstitutionally applied by a municipal employee . . . if the employee has not been adequately trained and the constitutional wrong has been caused by that failure to train." 489 U.S. 378, 388 (1989). The Supreme Court agreed with a number of the Courts of Appeals and concluded that "there are limited circumstances in which an allegation of a 'failure to train' can be the basis for liability under § 1983." Id. Those circumstances are narrowly confined to instances where "the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." Id.

In clarifying the deliberate indifference standard, the Court wrote that "only where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality — a 'policy' as defined by our prior cases — can a. city be liable for such a failure under § 1983." Canton, 489 U.S. at 389. It is not sufficient to demonstrate "that an injury or accident could have been avoided if an officer had had better or more training," because "in virtually every instance where a person has had [her] constitutional rights violated by a city employee, a § 1983 plaintiff will be able to point to something the city "could have done" to prevent the unfortunate incident." Id. 489 U.S. at 391-92. Instead, § 1983 claims against municipalities "can only yield liability against a municipality where that city's failure to train reflects deliberate indifference to the constitutional rights of its inhabitants."

The Third Circuit has embraced a three-part test to determine whether a municipality's failure to train or supervise amounts to deliberate indifference. A plaintiff must show that "(1) municipal policymakers know that employees will confront a particular situation; (2) the situation involves a difficult choice or a history of employees mishandling; and (3) the wrong choice by an employee will frequently cause deprivation of constitutional rights." Carter v. City of Philadelphia, 181 F.3d 339, 357 (3d Cir. 1999) (footnote omitted). As in Carter, Plaintiff has clearly met the first and third elements; the Borough must have known its officers would be presented with opportunities to steal from municipal residents, and known that such thefts would almost certainly result in deprivations of constitutional rights. Carter, 181 F.3d at 358. Even so, and also as in Carter, it is much less clear if Plaintiff has met the second element, namely whether the "situation [that led to the constitutional violation] involve[d] a difficult choice or a history of employee mishandling." Id.

Plaintiff Hernandez argues that "given the possibility for abuse [stemming from the policy of collecting information about absent residents], the police department did not take steps to train its members or to develop a system of checks and balances
that could have prevented abuse of the power and trust that the department encouraged its citizens to invest in it. This failure constitutes deliberate indifference." (Plaintiff's Opp. Brief, p. 13.)

Plaintiff's argument silently turns on a number of unfounded, interconnected assumptions. First, that a police department may subject itself to liability by erroneously believing that its officers will adhere to their oaths and avoid criminal conduct.[9] Second, that the Borough's policy of collecting information about

resident absences made the need to train officers about not using this information to burglarize residents "obvious." Third, that the Borough knew or should have known that increased supervision of officers was required to ensure that information collected from residents would not be used to break into residents' homes. Finally, that having information about absent residents in and of itself presented officers with a "difficult choice" that was likely to lead to constitutional violations absent training on the subject.

To support the foregoing assumptions, Plaintiff's argument relies heavily on the Third Circuit's opinion in Carter, where the Court directed:

city policymakers know to a moral certainty that police officers will be presented with opportunities to commit perjury or proceed against the innocent. Moreover, a failure by police officers to resist these opportunities will almost certainly result in deprivations of constitutional rights . . . [A]lthough it may usually be appropriate to assume employees will obey their oaths and the perjury laws, where there is a history of conduct rendering this assumption untenable, city policymakers may display deliberate indifference by [assuming employees will obey their oaths.]

[Plaintiff] should be allowed to pursue discovery in order to determine whether there was a practice of condoning perjury (evidenced perhaps by a failure to discipline perjury) or a pattern of police misconduct sufficient to require the police department to train and supervise officers to assure they tell the truth.

181 F.3d at 357 (internal quotations, citations, and footnotes omitted).

Because multiple police burglaries occurred in Palisades Park, Plaintiff argues there is "a history of conduct rendering the assumption [that officers would adhere to their oaths] untenable," sufficient to demonstrate that the municipality should not have relied on the assumption that its officers would behave lawfully. Plaintiff theorizes that given the number of burglaries that occurred, the Borough was deliberately indifferent when it failed to train officers not to burglarize minority residents' homes. Plaintiff also claims (without any support) that the Borough knew or should have known about the string of burglaries, but did nothing about them.

While a pattern of constitutional violations is often sufficient to demonstrate deliberate indifference, a necessary element to establish liability is that the municipality be actually or constructively aware of the violations. As the Third Circuit guided, causation can be shown by a "municipality's failure to act, once it was on notice that its procedures were constitutionally deficient." Bielevicz v. Dubinon, 915 F.2d 845, 851 (3d Cir. 1990) (emphasis added). A municipality may be liable in such a circumstance because "it is logical to assume that continued official tolerance of repeated misconduct facilitates similar unlawful actions in the future." Id. In essence, "a municipal custom may be established by proof that officials with policymaking responsibility knew of and acquiesced in an unlawful course of conduct." Bielevicz, 915 F2d at 854.

Although a string of constitutional violations did occur in this case, there is no evidence in the record to allow a trier-of-fact to conclude that Defendants' were deliberately indifferent to the prospect of violations or to the violations themselves. Plaintiff has failed to provide any evidence that the municipality was aware

information it gathered from residents was being used to commit burglaries, or even that police officers were engaged in a conspiracy to break into residents' homes. The only evidence in the record about Borough knowledge of the crimes is that as soon as Mrs. Hsu filed a complaint alleging that she had been robbed by police, the department commenced an investigation, and handed the matter over to the Bergen County Prosecutor's Office. This ultimately led to the convictions of those responsible, and to an end of police burglaries in Palisades Park.[10]

Plaintiff has failed to present any evidence that would support a finding of deliberate indifference by Palisades Park. She has failed to present any evidence that the municipality knew of the burglaries when they had happened, or that it did not act on reports of police involvement. Having failed to demonstrate any actual knowledge of the pattern of violations, Plaintiff has further failed to demonstrate on what basis the Borough "should have known" about the burglaries, or should have known that its policy of collecting information from absent residents was being abused, Similarly, Plaintiff has provided no evidence that burglaries were such an "obvious" result of police policy that Palisades Park was deliberately indifferent in not ordering additional training about not engaging in burglary, or in not ordering additional supervision to prevent police burglaries. In short, while Plaintiff has presented evidence that she was burglarized by police officers, she has not presented any evidence to tie this burglary to the Borough via municipal policy, custom, or deliberate indifference.

Even assuming Plaintiff had been able to show that the municipality was deliberately indifferent in failing to train and supervise its officers, Plaintiff would still have

had to show that this failure in training and supervision "actually caused" the rogue officers to break into her home. Carter, 181 F.3d at 357 n. 60, citing Canton, 489 U.S. at 391 (requiring plaintiff to prove his injury "resulted from" the failure to adopt a policy). Such a showing is made by demonstrating that "the injury would have been avoided had the employee been trained under a program that was not deficient in the identified respect."

Although Plaintiff has made an adequate showing that her rights were violated by Borough officers, she has failed to demonstrate that the violations would have been averted had a different training or supervisory regimen been implemented. While Plaintiff has submitted excerpts from the Palisades Park Officer's Manual for the Court's consideration, she has not indicated which portions she believes to be deficient, or provided any evidence (or even argument) about what modifications would have prevented her constitutional injury.

Plaintiff's only express contention regarding the manner in which Palisades Park failed to train its officers is that the municipality "failed to take appropriate action to train its officers concerning Sexual and Racial Discrimination." (Complaint ¶¶ 45, 56.) Given the nature of the constitutional violations that occurred here, the Court finds this contention to be decidedly wide of the mark. Even assuming that the victims of the officers' crimes were disproportionately minority women, the most that better sexual and racial discrimination training would have accomplished would have been to generate a more diverse group of burglary victims.

More critical to Defendants' summary judgment motion, Plaintiff has not provided the Court with evidence of any

kind related to the officers' training. She has not provided the Court with information on what type of training they received before they joined the force, or whether that training continued after they joined the force. Without evidence to consider about the manner in which the Borough of Palisades Park trained its officers, no reasonable jury could make a determination that the training was somehow deficient, let alone that it was the proximate cause of Plaintiff's injury.

The Court is mindful that in determining whether a failure to train amounts to deliberate indifference, "the focus . . . is on the adequacy of the training program in relation to the tasks the particular officers must perform and the connection between the identified deficiency in the . . . training program and the ultimate injury." Reitz v. County of Bucks, 125 F.3d 139. 145 (3d Cir. 1997.) Because Plaintiff has not placed any facts relevant to this inquiry before the Court, she can not hope to recover on her failure to train claims.

Similarly, Plaintiff has failed to provide the Court with any evidence about the Borough's supervisory practices. Although Plaintiff has demonstrated that a supervisor (Giannantonio) was involved in the efforts to cover up the burglary of Plaintiff's home, she has failed to provide any evidence as to how the conduct of those to whom Giannantonio reported deviated from Borough policy, or how adherence to Borough policy by those to whom the officers reported would have prevented Giannantonio from covering up the crime. Given this absolute failure to demonstrate the manner in which departmental policy was deficient, or to show what changes departmental supervision might have prevented the crime, Plaintiff can not hope to succeed on her inadequate supervision claims.

## IV. CONCLUSION

For all of the foregoing reasons, Defendants' motion for summary judgment is granted in its entirety. Because Plaintiff has not submitted sufficient evidence to succeed on the merits of her claims at trial, the Court need not reach Defendants' statute of limitations argument.

An appropriate Order follows this Opinion.

WILLIAM G. BASSLER, U.S.D.J.
Dated: March 27th, 2002

FOOTNOTES

1 Plaintiff's brief at times refers to the burglaries ceasing in 1994 and at times in 1995. In either event, there are no references in the record to any specific burglaries occurring after December, 1993.

2 Two other victims of the rogue officers' burglary ring, Mason and Connie Wang Hsu, brought a civil rights complaint against the Borough, the Police Department, and a number of the individual defendants. See Hsu v. Borough of Palisades Park, et al., 97-cv-666 (DMC). On August 24, 2001 this Court granted the municipal defendants summary judgment, on the grounds that Plaintiffs had failed to produce any evidence to support their claims. Plaintiffs appealed, and the Third Circuit affirmed in an unpublished decision on November 15, 2001.

3 The court finds it likely that this resident was in fact Mrs. Hsu, who commenced the action discussed in footnote 2.

4 Officer Anderson also testified that an internal investigation had been commenced by Detective Captain Framarin and Lieutenant Anthony Servis. Anderson stated that the investigation came about when Plaintiff's former husband reported his suspicions that police officers had been involved in the burglary. Plaintiff has not presented any evidence to indicate when her ex-husband made his complaint (i.e. whether it pre-dated the commencement of the Shu investigation), what action was taken based on his complaint, or whether any investigation stemming from his complaint concluded that officers were in fact responsible. The only evidence in the record of any statements by Plaintiff's ex-husband are in the brief section of Anderson's testimony included in Defendants' Appendix of Exhibits. (See Testimony of N. Anderson 8:5-10:4, Da 67.)

5 Plaintiff appears to have stated at her deposition that the FBI approached her in the Spring of 1996 with their suspicions that the burglary had been committed by police officers. Defendant argues that given her knowledge of police involvement in as early as 1996, Plaintiff's action commenced in 1999 is time barred. By way of response, Plaintiff claims she was mistaken at her deposition, and that she had no knowledge of police involvement until 1997, less than two years prior to commencing this action.

6 On August 20, 1999, the case was transferred, with the consent of the parties, to the District of New Jersey. Order of Shira A. Schendlin, U.S.D.J., dated Aug. 12,, 1999, Civ. No. 99—4182.)

7 Officer Anderson appears to have been named in a separate New Jersey Superior Court complaint, No. L-4359-98. According to Defendants, that action was

voluntarily dismissed by Plaintiff on February 14, 2001.

8 Although both Plaintiff's Complaint and Plaintiff's brief in opposition to summary judgment mention in passing that the municipality should be held liable for failing to screen the officers it hired, Plaintiff has put forth no evidence or argument as to why this is so. Plaintiff has failed to provide the Court with any evidence about the Borough's hiring process generally, or about how the officers who burglarized Plaintiff were screened. More importantly, Plaintiff has failed to provide any evidence about how different screening procedures might have averted the burglaries. Because a Plaintiff can not survive summary judgment on unsupported allegations alone, Defendants are entitled to summary judgment on Plaintiff's failure to screen claims.

9 Logic dictates that any Department which believes its officers will at all times adhere to their oaths will find it unnecessary to train its officers that they should not violate their oaths by committing crimes.

10 Mindful of this lack of evidence, the Court finds Plaintiff's reliance on Carter to be misplaced, because in Carter, the Third Circuit was confronted with a motion to dismiss, and not a motion for summary judgment. The relevant inquiry in Carter was whether the allegations in the Complaint could ultimately lead to relief, assuming adequate facts were discovered to support them. Because Carter's stated claim was not defective, the Circuit held that the plaintiff was entitled to proceed to discovery "to determine whether there was a practice of condoning perjury . . . or a pattern of police misconduct . ." 181 F.3d at 357.

Unlike the plaintiff in Carter, Plaintiff Hernandez has

already surmounted a motion to dismiss, and has had the opportunity to complete discovery. Therefore, this Court must determine whether, in a light most favorable to her, there is now sufficient evidence in the record of "deliberate indifference" by the Borough for liability to attach. Plaintiff cannot survive a motion for summary judgment merely on her well-pleaded allegations, although at times it stems that this is all she has attempted to do.

Civ. No. 99-3956 (WGB) ORDER
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LILLIAN HERNANDEZ,
Plaintiff,

v.

BOROUGH OF PALISADES PARK POLICE DEPARTMENT and BOROUGH OF PALISADESPARK,
Defendants.

This matter having come before the Court on Defendants Borough of Palisades Park and Borough of Palisades Park Police Department Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56; and

The Court having considered the submissions of the parties; and

The Court having decided this matter without oral argument pursuant to Fed. R. Civ. P. 78; and

For the reasons set forth in the Court's Opinion filed this day; and

For good cause shown;

It is on this 27th day of March, 2002, hereby ORDERED that Defendants' Motion for Summary Judgment is granted.

IT IS FURTHER ORDERED that the Clerk of the Court close this case.

WILLIAM G. BASSLER, U.S.D.J.